

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Jim M. Garrett,
Appellant,

v.

Union County Board of Review,
Appellee.

ORDER

Docket No. 13-88-0059
Parcel No. 06010-000-472-00

On December 24, 2013, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant Jim M. Garrett was self-represented and requested his appeal proceed without a hearing. County Attorney Timothy Kenyon represents the Board of Review. The Appeal Board now, having examined the entire record and being fully advised, finds:

Findings of Fact

Jim M. Garrett is the owner of property located at 1820 205th Street, Creston, Iowa. The real estate is classified agricultural. The dwelling had an assessed value of \$90,870 as of January 1, 2013. Garrett protested the assessment to the Union County Board of Review on the grounds that the assessment was not equitable compared to like properties in the taxing jurisdiction under Iowa Code section 441.37(1)(a)(1) and that there was a change in value since the last assessment under sections 441.37(1)(b) and 441.35(3). The Board of Review denied the protest.

Garrett then appealed to this Board reasserting his claims. Garrett asserted the dwelling's value should be reduced to \$56,140. In a re-assessment year like 2013, a protest based on change in value is akin to a market value claim under section 441.37(1)(a)(2). *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Therefore, we will only consider his

equity and over-assessment claims. Garrett also contends the 10-minute hearing limit at the Board of Review is insufficient and seeks its decision be reversed for this reason. We note this Board is independent of the Board of Review and does not regulate its procedures.

According to the property record card, the subject property is a two-story dwelling built in 1910. The dwelling has 1760 square-feet of living area; a one-half, unfinished basement; an enclosed porch; a deck; and a patio. The property is listed with a below-average quality grade (5+10). The dwelling sits on 11.40 acres of agricultural land. The values attributed to the agricultural land and some buildings are assessed differently under Iowa law, are apparently separately listed on another property record card that was not included in the record, and Garrett does not contest their valuation as part of the appeal.

Garrett provided the property record cards for the comparables he listed on his petition and that of one other property. He highlighted basic information on each record card as shown below. He also listed the distance from the confined animal feeding operations (CAFO) to each identified comparable property. The most recent assessment values provided on the printouts are for 2011.

Address	Year Built	Grade	TSFLA	Distance from CAFO	2011 AV of Buildings	2011 AV of Dwelling
Subject	1910	5+10	1760	0.904/1.920	\$ 11,540	\$ 90,870
1679 Clarke-Union	1890	5+10	1788	0.064/0.119	\$ 260	\$ 41,260
2331 Clover	1975	4+00	1300	0.188	\$ 14,450	\$ 78,010
1544 Adair-Union	1910	4+05	2108	0.193	\$ 720	\$ 51,550
1027 Cherry	1896	5+05	1571	0.016	\$ 11,570	\$ 48,220
2316 Clover	1935	4+00	1648	0.120	\$ 11,760	\$ 76,850

Although most of the properties are similar in age, quality, size, and proximity to the CAFOs, this information is insufficient to show inequity, as none of the properties had recently sold in an arm's-length transaction. To show inequity, a 2012 sales price for each comparable must be compared to the current assessment to develop an assessment/sales ratio. Absent this evidence, Garrett otherwise

would need to provide evidence to show the assessor did not uniformly apply assessment methods to the subject property and other similar properties. Garrett made no such claim.

Garrett claims his property's value has declined because of CAFOs that were going to be constructed in the vicinity of his Creston home. In his opinion, the improvement value should be reduced by \$39,141 based on a report completed by Hans R. Isakson, Ph.D., Department of Economics, University of Northern Iowa. The report, "Estimation of the Impact of the Effect of Confined Animal Feeding Operations on the Assessed Value of Selected Houses in Union County, Iowa," was completed May 14, 2013.

The report bases its conclusion on a previous analysis conducted by Isakson and Mark D. Ecker, Department of Mathematics, University of Northern Iowa titled, "An analysis of the impact of Swine CAFOs on the value of nearby houses." 39 AGRICULTURAL ECONOMICS 365-372 (2008). In the original analysis, Isakson and Ecker identified CAFOs as locally undesirable land uses (LULU) because of concerns of unpleasant odors and ground water contamination. They conducted a study to evaluate the impact of swine CAFOs on arm's-length, house sales in Black Hawk County, Iowa from January 2000 to November 2004. Isakson and Ecker used housing sales data and swine CAFO data incorporating variables measuring the number of animal units, the prevailing winds, and distance of the homes from the CAFOs. The variable "wind angle" measured the extent to which a house is downwind from a nearby CAFO in winter and/or summer months. Isakson and Ecker's study found houses that are very close (within 3 miles) and directly downwind from a CAFO suffered large adverse impacts. In applying the study to the subject property and others similarly situated in Union County, Isakson noted these properties in question were all less than three miles from two different CAFOs, identified as the Taylor North and South Sites.

In estimating the adverse effect of the CAFOs, Isakson conceded he did not know the market value of the subject property or other properties in Creston; therefore he adjusted their assessed values.

Isakson noted the Union County sites were much larger than the properties in the Black Hawk County study. He specifically used the only assessed value of the properties' improvements (apparently dwelling and agricultural buildings), excluding the assessed value of the land because he did not believe agricultural land would be impacted from an agricultural use. We question why the same logic Isakson applied for excluding agricultural land from the calculation would not also apply to the agricultural buildings. Like agricultural land, agricultural buildings are assessed differently than dwellings on agricultural land under Iowa law. He reported Garrett's property is located 0.904 miles from Taylor North animal feeding operation (CAFO) and 1.920 miles from Taylor South CAFO. Isakson applied the wind angle variable (degree of prevailing wind x angle of the house from true north) from the primary study to the Union County properties. He calculated that the wind angle of Garrett's property was 75 degrees for the Taylor North Site and 78 degrees for the Taylor South site. Based on this he estimates a negative effect on Garrett's assessed improvement value (dwelling and agricultural buildings) of \$37,636 (75 degrees x 0.49% = 36.75% value reduction) before Taylor South is operational and a negative effect of \$39,141 (78 degrees x 49.0% = 38.22%) after Taylor South is operational. Based on this analysis, Garrett requests the assessed value of the dwelling be reduced by \$39,141. Isakson's method cannot be applied to only the dwelling value since it was calculated using two combined values. Furthermore, it is not clear that Isakson used the 2013 assessment since there is no evidence of the total 2013 assessment in the record (i.e. dwelling, agricultural buildings, and agricultural land). Finally, as previously noted, Isakson's calculation has no basis in the market value of the property.

Garrett also provided a working paper entitled "Living with Hogs in Iowa: The Impact of Livestock Facilities on Rural Residential Property Values." Joseph A. Herriges, Silvia Secchi, & Bruce A. Babcock, (Ctr. for Agric. & Rural Dev., Iowa State Univ., Working Paper No. 03-WP 342, 2003). The authors found livestock operations had an overall statistically significant effect on property

values of residents living in close proximity to the operations. Like the Isakson and Ecker study, the largest negative effects were predicted for properties downwind and close to livestock operations. Similarly, results of another study in North Carolina found a negative and significant impact on property value from hog operations. Katherine Milla, Michael H. Thomas, & Winsbert Ansine, *Evaluating the Effect of Proximity to Hog Farms on Residential Property Values: A GIS-Based Hedonic Price Model Approach*, 17 URISA JOURNAL 27, 30-31 (2005). Additionally, Garrett submitted an eight-page list of reference materials and articles reiterating the negative impact of hog confinements on rural economy, environment, and residential property values generally. However, none of these articles are specific to Union County properties values, and Garrett did not demonstrate a specific negative affect on his property value.

Union County Assessor Gene Haner submitted a letter (Exhibit A) explaining the Board of Review's action. Haner reported the hog confinements in question were not constructed until after the January 1, 2013, assessment date. The confinement owner applied for a new address prior to construction of one of the CAFOs on March 28, 2013. As of April 2, 2013, there were no improvements other than a driveway. Further, Haner reported an open house was held on June 19, 2013, at one of the CAFOs and at that time, there were no hogs in the building. Therefore, the Board of Review concluded the CAFOs could not have had an adverse effect on the property value for the 2013 assessment. We agree.

In the certified record, Haner also provided two sales of properties located near hog confinements, presumably in an effort to demonstrate property values of homes near CAFOs had not declined. These sales occurred in 2004 and 2008 and the sale prices were significantly higher than the assessed values of the properties at the time of sale. While this information demonstrates a continued market for dwellings near confinements, it does not demonstrate the impact on value, if any, of their proximity to such facilities. For this reason, we give it no consideration.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property, or a "fair and reasonable exchange . . . between a willing buyer and a willing seller." *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

Id. at 579-580. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied. Garrett did not prove by a preponderance of the evidence that his property is inequitably assessed under either the *Eagle Food* or *Maxwell* tests.

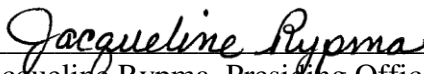
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property’s correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Garrett submitted Isakson’s analysis of the impact of nearby CAFOs on his property’s value. While an interesting theoretic concept, Isakson’s method is not based on an established and recognized approach to property valuation. While we recognize that close and downwind proximity to CAFOs may have a negative impact on property values, Isakson’s predictions of estimated value loss are premature, at best, as neither of the CAFOs were operational as of the assessment date. Furthermore, the study lacks any indices of the property’s fair market value, such as an appraisal, comprehensive market analysis, current sales data, or paired sales analysis. Additionally, the sales comparison approach is the preferred method to assess property under Iowa law. § 441.21(1)(b). Ultimately, we find do not find Isakson’s method of estimating future decline in improvement values to be reasonable or supported by current, local market data.

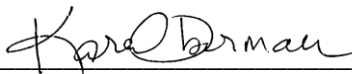
After consideration of the evidence, we find Garrett failed to demonstrate the subject property is over assessed.

THE APPEAL BOARD ORDERS the January 1, 2013 assessment of the Board of Review is affirmed.

Dated this 7th day of February 2014.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

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